

JOINT TESTIMONY OF  
THE ASSOCIATION OF COMMUNITY TRIBAL SCHOOLS  
AND  
THE NATIONAL INDIAN SCHOOL BOARD ASSOCIATION  
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS  
MARCH 14,2001  
REGARDING EDUCATION PROGRAMS BENEFITING INDIAN STUDENTS

Mr. Chairman, Honored Members of the Committee, distinguished guests, Staff;

My name is Dr. Roger Bordeaux. My current position is Superintendent of the Tiospa Zina Tribal School in Agency Village, South Dakota. I appear today in my capacity as the Executive Director of the Association of Community Tribal Schools, Inc., and I am here representing a coalition of the two major organizations representing tribally operated and Bureau operated schools serving Indian children.

The Association of Community Tribal Schools (hereinafter ACTS) represents a significant number of the 124 tribally controlled elementary and secondary schools funded by the Bureau of Indian Affairs. There are over 24,000 students in these tribally controlled elementary and secondary programs. The schools are in the States of Maine, Florida, North Carolina, Mississippi, Louisiana, South Dakota, Minnesota, North Dakota, Michigan, Iowa, Wisconsin, Kansas, Wyoming, Oklahoma, Montana, California, Washington, Idaho, Nevada, Arizona, and New Mexico. Our mission is to assist community tribal schools toward their mission of ensuring that when students complete their experience in our schools, they are prepared for college and lifelong learning and that these students will strengthen and perpetuate traditional tribal societies.

I am also here representing the National Indian School Board Association. Their Executive Director, Carmen Taylor, has asked me to speak on her behalf. The National Indian School Board Association (hereinafter NISBA) was established in 1982 for the purpose of providing training, technical assistance, advocacy, and networking opportunities for all schools funded through the Bureau of Indian Affairs. NISBA has 100 member schools -contract and grant schools operated by tribes, as well as BIA-operated schools. Their current President is Ted Lonefight, from the Mandaree school located on the Fort Berthold Reservation in North Dakota. Their office is located on the campus of Salish Kootenai College, a tribally controlled college on the Flathead Reservation in western Montana.

While I do not represent them today, before I begin our presentation, I want to recognize the work put into the reauthorization effort by the third partner of our ongoing coalition. The Native American Grant Schools Association (hereinafter NAGSA) includes grant and charter schools on Indian lands of 5 of the largest tribes in Arizona and New Mexico. Most of their member schools are located on the Navajo Reservation, which encompasses land in the States of Arizona, New Mexico and Utah.

I am here today to express our support for S 211, The Native American Education Improvement Act of 2001. This bill, introduced by Chairman Campbell and Ranking Minority Member Inouye, contains vital amendments to P.L. 95-561 and P.L. 100-297, the statutes governing the provision of elementary and secondary education services under Federal programs for the benefit of federally recognized tribes. It is the culmination of literally years of work on the part of our schools, the Members and staff of the Senate Committee on Indian Affairs and citizens concerned with the education of Indian children from around the country. The three organizations named above began work on a package to improvements for Bureau of Indian Affairs funded and operated programs in March of 1998. Over six drafts of proposals to revise and extend the basic provisions governing BIA funded programs were done, with dozens of meetings involving literally every tribe and school served by such programs. Compromises on all sides were reached. Your own staff then took our work, and produced their own series of drafts for circulation and comment. All sides were heard and considered, and a concerted effort at consensus was made.

The final bill does not contain all of our original suggestions. For example, my own organization felt strongly about the need for a general authority to allow local tribes and schools to tailor their BIA Area and Agency education offices to meet their needs and desires for services and structure. This "designer" Area and Agency legislative language led to the less inclusive language in the current draft which allows contracting by tribes of Area and Agency functions which do not have the status of being inherently Federal functions. My point is that this package of amendments, is carefully crafted, and at this point, to our knowledge, has the support of all players. It is something we are proud to support.

Crucial to these negotiations have been the role of your staff, and we would like to recognize and salute them for their efforts. They have been unflagging in their efforts on behalf of Indian tribes, schools, parents and children and you should be very proud of them.

This package contains a wealth of improvements for Indian education programs. Some of the most notable, but by no means all of them are:

#### AMENDMENTS PERTAINING TO ALL BUREAU SCHOOLS

- The establishment of a Findings section for the law, which once and for all, recognizes the trust responsibility for the provision of Indian education.

- a rewritten standards section which, while retaining the right of the Bureau to establish standards, says that all schools which receive Bureau funding shall, within two years, be accredited by a State, regional or (in some cases) tribal organization, the specific set of standards to be used to be chosen by the school.

- a provision allowing schools to expand their grades or student body, as long as such expansions are paid for through nonBureau funds, and establishing a means to share administrative costs between Federal and nonFederal programs.

-a study by the Comptroller General on the adequacy of funding for Bureau schools and the formula for distributing Bureau money for operation of academic programs. This will help us get a hand on the issue of funding level for Bureau funded schools, and is critical.

-a provision which clarifies and recognizes the right of tribal governing bodies to establish school attendance boundaries. Also, it authorizes the tribe to establish, by resolution, parental choice. Finally, it allows off reservation schools to establish special emphasis programs and have children placed according to need for these.

-three critical provisions to alleviate the crucial facilities/maintenance backlog and crumbling state of our facilities. First, you have required a study of the current state of Bureau funded facilities, with a negotiated rulemaking to develop a formula for more equitable distribution of maintenance and facilities funds. For the second, you required the Bureau establish a new construction list for the replacement of all BIA and tribal education facilities inventory on a 40 year time frame. Finally, you put in a requirement that all funds appropriated for facilities maintenance and roads be distributed to the schools or be distributed pursuant to a written agreement with a school (the Bureau had been in the habit of withholding amounts at agency or Area level).

-You amended the education functions section to have the Bureau education office assume control over its own contracting, procurement, and finance personnel. These are currently controlled by other Bureau entities. You also established the aforesaid authority for tribes to contract most of the functions at the local Area and Agency office.

-did away with the reservation at the Central Office level for school board training and gave an increased amount to each school board, for them to use to meet locally determined needs.

-put in a provision waiving matching funds for participation in Federal programs.

-set a floor on the Administrative Cost grants of \$200,000

-put in a section on regional meetings and negotiated rulemaking.

## AMENDMENTS TO TRIBAL GRANTS SCHOOL AUTHORITY

-put in language recognizing that tribes are not guarantors of school grants.

-added three provisions encouraging personnel from tribally controlled schools and tribally controlled community colleges to act on standards review teams, requiring a report on procurement and requiring the school to send directly (not through the Bureau) to the tribal council its evaluation report.

-perhaps the greatest change for grants and tribally controlled schools. Changed the first payment from the Bureau to a contract and grant school to 80% of what the formula determined it should receive. We had requested a change to achieve full parity with the payments received by BIA

operated schools of 85%, but the Bureau resisted this change. This is, however, a great improvement from the current initial payment of 50%.

- put in language similar to that in Impact Aid limiting a State's ability to take Bureau funds into consideration and reduce any State payments (important to tribally controlled charter school)

- Finally, and very importantly, created a new endowment program for tribal schools.

As you can see, this package is a major one, and it will have a major positive effect on Bureau and tribal programs. We can only recommend minor changes to the package, which are mainly ministerial. We have appended those to our testimony.

One final point is to register, again, our support for tribal departments of education. As tribes become more sophisticated and more involved in the education of their students, a logical progression of the concept of sovereignty is to develop tribal departments of education. They can serve in training, policy and development support capacities with respect to educators, parents, communities and tribal officials. It is time to give them our support.

## NONINDIAN SPECIFIC PROVISION OF REAUTHORIZATION

Mr. Chairman, while we are supportive of S 211 and the work this Committee has done on legislation dealing with the Bureau of Indian Affairs funded programs, we do want to bring to your attention a serious concern we have with the work of the Health, Education, Labor and Pension Committee regarding the overall reauthorization of Federal education programs. We are concerned about the Committee's actions regarding testing and continued eligibility for Title 1 funds.

As you know, the Department of Interior receives a setaside under the Title 1 program. All Bureau funded schools, including BIA operated and contract or grant schools under tribal authority, receive part of this money from the Bureau under a formula distribution system. These funds have become critical to the success of our schools. Due to severe funding shortfalls within the funds appropriated to the Bureau, these funds are often the only monies we have for remedial and school-wide reform programs to augment the basic academic curriculum. These supposedly "supplemental" funds are really very basic for a Bureau funded school, to a far greater extent than in regular public schools. In the average public educational agency, Federal funds do not constitute more than 8% of the total funds available for academic programs. In our schools, the Department of Education "supplemental" funding (largely Title 1) constitutes about 25% of the money we have for our students.

Under the Committee's proposal, as we understand it, the schools receiving Federal Title 1 assistance would be required to annually test their students. Continued eligibility for Federal funds (not only Title 1 funds but all Federal funding from the Department of Education) would be premised on the student's showing successful performance on the test. Poor student performance would cause State intervention and possible school reorganization or closure, as well as immediate loss of Title 1 funds

Based on our interpretation of the bill, these provisions would seem to be applicable to the Bureau funded schools.

Senator Campbell, we want our children to perform. We have high expectations for them and are proud of our communities and our schools. However, we recognize as a fact that our students do not always perform well on standardized tests, due to cultural biases inherent in the tests. The provisions in the HELP Committee bill, as adopted last week, are not written with our students in mind. First of all, involvement by a State is not applicable to our schools, which are under Federal or tribal jurisdiction and with which the State is not involved. Do these provisions mean intervention by the Bureau of Indian Affairs Central Education Office? With all respect to this group, they are hardly equipped to do this, and the resulting chaos and ill-will (not to mention the damage to Federal/tribal relations) would be extremely damaging to local school programs. Also, closure and/or reorganization within our isolated tribal communities is just not a viable option. Simply withholding funds from the Bureau is punitive, and does not solve the needs of our children. Loss of these funds would be devastating.

We hope you can work with your colleagues in the Senate to craft an amendment to the HELP Committee proposal which would exempt Bureau schools from these provisions, as they are written. We know how important accountability is for this reauthorization. However, a provision could be crafted using other criteria to gauge the success of our students and their program. Alternatively, have it apply only where the Bureau has requested additional funds to address academic shortfalls and then only after such remedial provisions have had time to take effect. Perhaps it would be best to condition the application of the testing and accountability provisions to fiscal years in which the Congress appropriates an amount for Indian schools which is equal to the amount spent on a per pupil basis as the average per pupil expenditure in United States public schools. This may have the positive dual effect of equity (in that we do not have a condition placed on us until we have an equal chance to meet standards) and the encouragement of increased funding by Congress.

At the least, if the testing provisions are applicable, we hope that we may receive a setaside from the funds which the new legislation is proposing for creation and modification of testing instruments. We do not think this is the solution to all of our concerns, since each test would have to be considered on a tribal or regional basis. Also, we do not want the Bureau Office of Indian Education handling such modifications without tribal and school involvement. However, we need some relief from the potential problems this provision may unintentionally cause Indian controlled schools.

With respect to the other provisions of the HELP Committee reauthorization package, there are two points. First, we want to ask you to be sure that for any programs authorized in the package, participation of our schools is allowed. To give an instance in which this has not been done, we cite the Federal program on Character education. In programs which go through the State, we suggest a setaside using the Bureau as the flow-through mechanism, under the theory of the Bureau as a 51st State. Where benefits flow directly from the Department of Education to the local educational agencies, we need to be sure our schools are qualified. Second, we wish to express our support for reauthorization of all programs in the Indian Education Act. Since its inception in 1972, the Indian

Education Act programs have served as trailblazers for Indian people. Many of the tribally controlled schools got their start with funds from this program, and literally hundreds of Indian students have gone to college with Indian Education Act scholarships and fellowships. We fully support the action of the Senate on this Act.

It only remains to say ACTS and NISBA are very pleased with S 211, and we hope you are as well. I will be happy to answer any questions.

ATTACHMENT TO TESTIMONY BEFORE SENATE COMMITTEE ON INDIAN  
AFFAIRS  
TESTIMONY OF ACTS AND NISBA  
MARCH 14, 2001

ALL REFERENCES ARE TO LINE AND PAGE ON S 211 OF 107TH CONGRESS, AS  
PRINTED

1) Section 1121(e)(2), Page 9, lines 8, 12, and 13- the Term "Secretary" was changed to "Director". This concerns the person who should receive and pass on the standards proposed by a tribe, if it waives Bureau standards. This was originally put with the Secretary in law, to make sure someone high on the chain of command was making a decision on what a sovereign tribe is proposing. This takes it down a peg. Was in the last draft done for the 106th Congress, but we asked why it was changed and never received an explanation. Why it was changed? Who recommended this?

2) Section 1121 (i)(6) , Page 21, line 16 -the provision starts, "Nothing in this section shall be construed to preclude..." We are not sure that the Bureau has based its interpretation that expansions are prohibited on this section. Perhaps would be best to start with this, "Any other provision of law notwithstanding..."? This is what is done in other places.

3) Section 1121 a), page 21, lines 21 et seq- this does not read very well. Change to:

"Bureau funded schools which receive funds from non-Federal sources for the purpose of providing part of their education program or related services shall apportion joint administrative, transportation, and program costs between funds received from the Bureau of Indian Affairs for education activities or related services, and the funds received from non-Federal sources, funds so apportioned to remain at the local level"

This would seem to be clear and still meet the situation.

4) No section, Page 25- between lines 16 and 17- This version removes the current language which codifies certain BIA education regulations and defines the term regulation so as to cover a broad range of actions. We discussed last year doing away with part of the provision as no longer necessary , but we thought we were going to retain the codification of the general regs on Education policy and the definition. We thought they would be moved to the section on regulations, but we do not find them

there. Why was the whole thing deleted? Can we put back the part on Education policy and the definition of regulation?

5) Section 1124(a)(4) -Page 30, line 18- shouldn't we add in the House Committee on Education and the Workforce, since this is the House Committee on jurisdiction? Maybe instead of Resources??

6) Section 1124(a)(5)(i)(I) -Page 31, line 8 -Shouldn't this read "useful life of structures and major systems"?

7) Section 1124(e)(1)(F) -Page 38, Line 14 -Shouldn't this have a new title. ? This was rewritten from the earlier drafts. However, while the substance was changed, the title remained the same.

8) Section 1124(e)(2) Starting on Page 39, line 24- We thought that one of the major concerns of the Navajo Area School Board Association, which proposed this language, was keeping staff housing open while repairs were done, so they would not lose staff. While a lot has been done on this section, nothing on Staff housing.

9) Section 1124(e)(4) Page 41, starting with line 8- says a school may use "school operation funds" for repairs. Should we stipulate these are Section 1126 and other BIA funds? How about Title or IDEA money from Dept of Ed? Will we get in problems with them?

10) Section 1125(c) page 44, lines 9 et seq. -relating to contracting of local BIA activities. We believe we should reference the definition of "inherently federal function"? Also, we ask you to consider putting in our recommended sentence asking that the Secretary consolidate tasks, wherever possible, to allow for the most contracting.

11) Section 1126(d)(4) Page 56, Line 21 -this has a provision with a closing parenthesis. However, we can not find where the parenthetic clause starts. Should this parenthesis be deleted?

12) Section 1127 -thank you for putting in the floor. Can we also reconsider the idea of making these an entitlement, by deleting the term "Subject to appropriations", and the language dealing on percentage distribution. Do we need to have OK from Leadership or Appropriations?

13) Section 1129(a)(2) -changes all of the current language in the statute relating to timing of making payments. We were not aware of a problem with this provision, nor were we aware that anyone was proposing to change it. Is this change a mistake? If so, it was carried over from the last draft. If not, why was it made? How would the reworked provision work? Does this mean there is a new timeline for payments? If so, what is it? While we question the rewrite, we support the forward funding of operations and maintenance. The first step is putting that in the authorizing language, so we can take it to appropriations.

14) Section 1129(h)(2)(B) -Page 82, line 22- shouldn't this be the entity who makes the grant not the entity receiving a grant. In other words, doesn't it make more sense to have "making" instead of

"receiving"? We are talking about the agency which makes the grants.

15) Section 1131(h) Page 98, line 16- removed the term "or annual compensation" from the language. What is the impact of this change?

16) Upon reflection, we may not need section 1133 anymore. This was put in in 1978 because non-education activities in the Bureau were treating education activities in different Areas differently. This was to have those shops come up with one set of rules for all education functions, wherever located. This is not a problem any longer.

17)Section 1137 Page 115, starting at line 20 -relating to regulations. Same concern as earlier about definition of regulation and codification of Education policies. Also, does this provision on negotiated rulemaking apply to Section 1121, standards? 1121 has a two year timeline. Also, while this section is specifically mentioned as applying to other sections (see those on Dorm standards and formula) Section 1121 does not reference it.

#### TRIBALLY CONTROLLED SCHOOLS ACT OF 1988

18) Section 5204(a)(4) -page 138, starts at line 18- this provision came from the Bureau (at least, we know that we did not request it). Every time we read it, we have a different interpretation on what it does. We asked in this past May for an explanation on what this does and when it would be effective, but we did not get one. Are the authors sure this does what they want it to do?

19) Section 5204(c)(1)(A), Page 140, line 4- given the changes made in the preceding amendments, shouldn't "1127" be "1126"?

20) Section 5205(a)(2) Page 143, line 16- I think that given our other changes, "1125(d)" should be either 1125(e) or even 1124(f). We know this isn't right. See similar problem in Section 5205(b)(2), Page 145, line 7.

21) Section 5207(b)(1)(B) and (C) -page 161, line 9 and 12 et seq. -first, for both provisions, Webster defines biannual as twice a year. We don't think this is what the author's intended. Should it be biennial (every two years)? Should it be annual? As for the second provision, can someone provide us with an explanation of what "written procurement standards that are developed by the local school board" means?

22) Section 5207 (c)(1 )(B), Page 166, line 6- shouldn't "1121 (e)" be "1121 (f)"?

23) Section 5208(a)(1)(B) -Shouldn't the last sentence distribute any recovered funds pursuant to the formula? This would have equal payments going to all Bureau funded schools, regardless of the formula?